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ACTION SCT-00

INFO	LOG-00	AID-00	A-00	ACQ-00	CCO-00	CG-00	CIAE-00
	COME-00	CTME-00	DODE-00	DOEE-00	DOTI-00	WHA-00	SRPP-00
	DS-00	EB-00	FAAE-00	FBIE-00	VC-00	TEDE-00	INR-00
	INSE-00	L-00	VCE-00	M-00	AC-00	NRCE-00	NSAE-00
	OCS-00	OMB-00	PA-00	PM-00	PRS-00	ACE-00	P-00
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FM AMEMBASSY OTTAWA

TO SECSTATE WASHDC IMMEDIATE 3871

INFO DEPT OF JUSTICE WASHDC PRIORITY

DEPT OF HOMELAND SECURITY WASHINGTON DC PRIORITY

NSC WASHDC PRIORITY

RELEASED IN PART
B1, 1.4(B), 1.4(D), B2

S E C R E T OTTAWA 000343

NOFORN

E.O. 12958: DECL: 02/06/2014

TAGS: PINR, PTER, PREL, PGOV, CA

SUBJECT: CANADA: TERMS OF REFERENCE FOR THE ARAR PUBLIC
INQUIRY

REF: OTTAWA 230

Classified By: Brian M. Flora, Acting DCM, for reasons
1.5 (b) and (d).

Summary:

1. (SBU) The "Terms of Reference" for the public inquiry into the circumstances surrounding Maher Arar's detention in New York and deportation to Syria were released late on February 5. They grant broad investigative powers to Justice Dennis O'Connor, the Commissioner who will lead the process, but the scope of his inquiry is limited almost exclusively to the activities of Canadian officials. At the conclusion of the inquiry (not expected for many months), the Commissioner will issue a sanitized public report on his findings. He has also been tasked with making recommendations for independent oversight of Royal Canadian Mounted Police (RCMP) activities in matters of national security. These will not be binding for the Government, but Deputy Prime Minister McLellan has indicated publicly that the GOC will take the recommendations "very, very seriously."

UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: SHARON E AHMAD
CLASSIFICATION: SECRET REASON: 1.4(B), 1.4(D)
DECLASSIFY AFTER: 6 FEB 2024
DATE/CASE ID: 15 MAY 2009 200706444

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The Terms of Reference:

3. (U) As reported Reftel, the Government of Canada announced January 28 that Dennis O'Connor, an Ontario Appeals Court judge, would undertake a public inquiry into the actions of Canadian officials who had dealt with the detention of Maher Arar by U.S. officials in New York and his subsequent deportation to Syria. O'Connor was also tasked with making recommendations, based on existing domestic and international models, concerning the creation of an independent review mechanism for the RCMP's activities in the realm of national security. Late on February 5 Deputy Prime Minister and Minister for Public Safety and Emergency Preparedness Anne McLellan issued the terms of reference for the inquiry.

4. (U) As Commissioner for the inquiry, Justice O'Connor is tasked with investigating and reporting on the actions of Canadian officials relating to Mr. Arar, including his: detention in the U.S.; deportation to Syria via Jordan; imprisonment and treatment while in Syria; return to Canada; and any other circumstances directly related to him that he (O'Connor) considers relevant to his mandate. The inquiry is not to express any conclusion or recommendation regarding the civil or criminal liability of Arar or any other person or organization. The Commissioner is also obligated to ensure that the conduct of the inquiry does not jeopardize any ongoing criminal investigation or proceedings.

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5. (U) To conduct the inquiry, Justice O'Connor will have broad powers under the Inquiries Act. He is authorized to use any procedures and methods he deems expedient, including the calling of witnesses. He will have access to both classified and unclassified documents pertaining to the subject of the inquiry. He may give interested parties the opportunity give evidence and to examine or cross-examine witnesses "personally or by counsel" on relevant evidence. He may engage the services of experts and other persons.

6. (U) The terms of reference also impose on the Commissioner the requirement to take all steps necessary to prevent disclosure of information that, if disclosed to the public, he feels would be "injurious to international relations, national defense or national security." He is directed to follow the Government Security Policy Act in the handling of sensitive information. If requested by Canadian Attorney General (AG), he would receive classified or

sensitive information "in camera and in the absence of any party and their counsel" and then release a sanitized version of the information, based on consultations with the AG. If the AG objects to the material proposed for release, the matter would be referred to an independent Federal Court judge.

7. (U) At the conclusion of the inquiry, the Commissioner is directed to submit a report or reports to the Governor in Council (Cabinet) and to file the record of the inquiry with the Clerk of the Privy Council. Deputy Prime Minister McLellan has said the file would be available to members of the PCO, including opposition party leaders who elect to be sworn into the Council and who take the government's secrecy oath. The report(s), which would be sanitized of classified materials and released publicly, would include the findings on the conduct of Canadian officials in the Arar case as well as and Justice O'Connor's non-binding recommendations regarding RCMP oversight in matters of national security.

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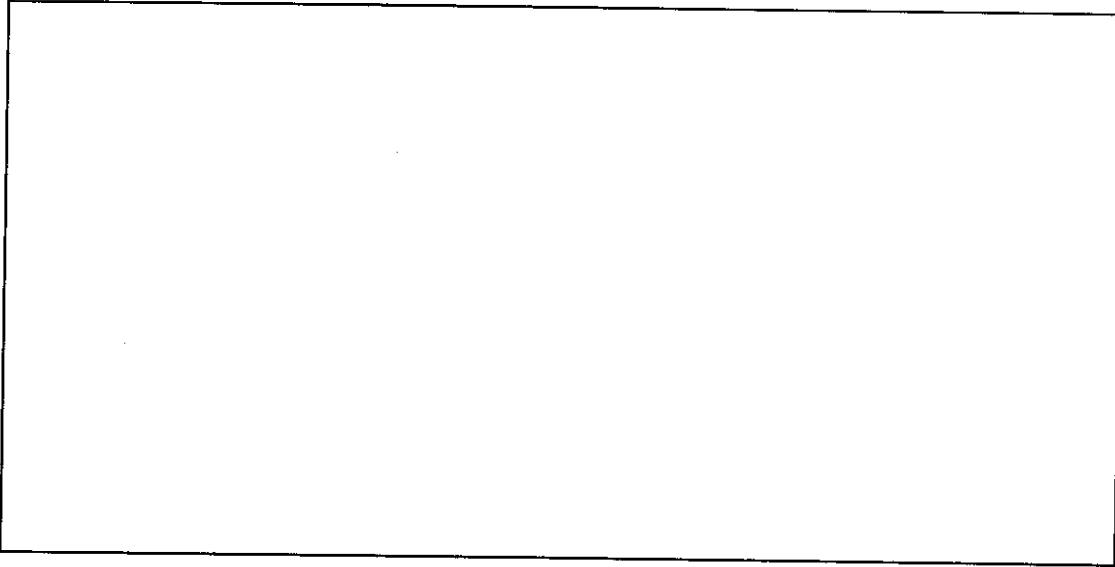
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